U.S. Department of Justice

Immigration and Naturalization Service

OD

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [redacted] Office: New York Date: JAN 24 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

FOR Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 23, 1966, in Friendship East Coast, Guyana. The applicant's father, [redacted] was born in Guyana in 1938 and became a naturalized U.S. citizen in November 1994. The record contains the applicant's birth certificate which lists his father as [redacted] and his mother as [redacted] The record fails to explain the connection between the mother's name on the birth certificate and the alleged mother supported by affidavits. The applicant's alleged mother, [redacted] was born in 1939 in Guyana and became a naturalized United States citizen in January 1981. The applicant's father and alleged mother married each other on January 30, 1981. The applicant was lawfully admitted for permanent residence on July 6, 1978. The applicant claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director determined that the record failed to establish that the applicant met the requirements because his father naturalized after the applicant's 18th birthday. The district director determined that the applicant had failed to establish that he was born out of wedlock because, by virtue of the Children Born Out of Wedlock (Removal of Discrimination) Act, effective May 18, 1983, Guyana eliminated all legal distinctions between legitimate and illegitimate children. Children born out of wedlock in Guyana after May 18, 1983, and children who are under the age of 18 prior to that date are deemed legitimate and legitimated children respectively. See Matter of Goorahoo, 20 I&N Dec. 782 (BIA 1994). The applicant is considered to be a legitimate child at birth; therefore, he has two legal parents. The district director then denied the application accordingly.

On appeal, counsel argues that the applicant was born out of wedlock and [redacted] is not the applicant's father. Counsel's assertions are unsupported in the record.

Section 321(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of

[redacted]

> the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
>
> (4) Such naturalization takes place while said child is under the age of 18 years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes-Martinez, Interim Decision 3316 (BIA 1997), the Board stated the following; "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's father became a naturalized U.S. citizens after the applicant's 18th birthday and (2) the applicant became a legitimate/legitimated child having two parents by virtue of the Children Born Out of Wedlock (Removal of Discrimination) Act, effective May 18, 1983.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to satisfy the statutory requirements at §212(a)(1) and (a)(4) of the Act. Therefore, the district director's decision will be affirmed and the appeal will be dismissed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

ORDER: The appeal is dismissed.